



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2003

Ms. Alice Caruso
Assistant Disclosure Officer
Information Release
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2003-5855

Dear Ms. Caruso:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 187078.

The Texas Workforce Commission (the "Commission") received a request for copies of all materials in the Commission files relating to a named individual. You inform us that the Commission will release most of the requested information to the requestor. However you assert the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We reviewed the information you submitted and considered the exceptions you claim.

Initially, we address the Commission's obligations under section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide as follows:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). In this case, you state that the Commission received the present request for information on June 12, 2003. Thus, you should have submitted your request for an attorney general opinion no later than June 26, 2003. We received your letter, in which you request an attorney general decision, on June 30, 2003. Therefore, we find that the Commission did not request a ruling from this office within the prescribed period. *See* Gov't Code § 552.301(b) (requiring governmental body to ask for the attorney general's decision no later than the tenth business day after the date of receiving the written request). Consequently, we conclude the Commission failed to comply with section 552.301(b).

According to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. A governmental body must release information presumed public unless it demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest exists when some other source of law makes the information confidential or third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Section 552.107, a discretionary exception under the Act, does not qualify as a compelling reason to withhold information from the public. *See* Open Records Decision No. 630 at 4 (1994) (governmental body may waive Gov't Code § 552.107(1)); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). However, because the application of section 552.101 of the Government Code provides a compelling reason to overcome the presumption of openness, we will address your claim under this exception despite the Commission's failure to comply with section 552.301(b).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. In Open Records Decision No. 476 (1987), this office determined that "claim information" was confidential under federal regulations enacted pursuant to statutory authority. *See* 20 C.F.R. §§ 603.1 *et seq.* "Claim information" means information regarding:

- (1) Whether an individual is receiving, has received or has applied for unemployment compensation;

....

- (3) The individual's current (or most recent) home address;

....

(5) Any other information contained in the records of the State employment compensation agency which is needed by the requesting agency to verify eligibility for, and the amount of, benefits.

20 C.F.R. § 603.2(c)(1), (3), (5). Pursuant to title 20, section 603.7 of the Code of Federal Regulations, state unemployment compensation agencies, such as the Commission, must protect the confidentiality of claim information. 20 C.F.R. § 603.7. You argue that the federal Social Security Act requires states to comply with the directives of the United States Department of Labor (the "Department") in administering state Unemployment Insurance ("UI") programs and that a Department directive, (UI Program Letter No. 34-97), specifies the conditions under which such claim information may be released. Based on your arguments and our review of the submitted information, we believe Exhibit B consists of information contained in the Commission's records relating to whether the individual has received or applied for unemployment compensation and to the purpose of verifying eligibility for benefits. *See* 20 C.F.R. § 603.2(c)(5). Therefore, we conclude the contents of Exhibit B constitute claim information made confidential by title 20, section 603.7 of the Code of Federal Regulations. *See* 20 C.F.R. § 603.7. Accordingly, the Commission must withhold Exhibit B, in its entirety, under section 552.101 in conjunction with federal law unless otherwise authorized to release the information under part 603 of title 20 of the Code of Federal Regulations or UI Program Letter No. 34-97.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body


fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 187078

Enc: Submitted documents

c: Ms. Julia M. Rendon
Bracewell & Patterson, L.L.P.
106 South St. Mary's Street, Suite 800
San Antonio, Texas 78205-3603
(w/o enclosures)